

State of South Carolina



Public Service Commission

July 25, 1997

GUY BUTLER

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Vice Chairman

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Commissioner

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Commissioner

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OVERNIGHT MAIL

DOCKET FILE COPY ORIGINAL

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Room 222  
Washington, D.C. 20554

RECEIVED  
JUL 23 1997  
FCC MAIL ROOM

IN RE: CC DOCKET NO. 97-165 - PETITION FOR COMMISSION  
ASSUMPTION OF JURISDICTION OF LOW TECH DESIGNS,  
INC.'S PETITION FOR ARBITRATION

Dear Mr. Caton:

Enclosed please find an original and four (4) copies of the Public Service Commission of South Carolina's Response to the above-captioned Petition. I have enclosed an extra copy, which I would appreciate your date-stamping and returning to me in the enclosed self-addressed, stamped envelope. I also enclose copies for all individual Commissioners and for Messrs. Richard Welch and Bill Kehoe, and Ms. Janice Myles of your Staff, which I would appreciate your distributing as appropriate. In addition, I enclose proof of service on GTE and Low Tech Designs, Inc.

Thank you for your consideration in this matter.

Sincerely,

F. DAVID BUTLER  
General Counsel

FDB:ng

Enclosures:

cc: James M. Tennant  
Joe W. Foster, Esquire  
Morris Sinor, Esquire  
International Transcription Service

No. of Copies rec'd  
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CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of July, 1997 served the Public Service Commission of South Carolina's Response to the Petition of Low Tech Designs, Inc. by depositing copies of same in the United States mail in a properly addressed envelope with adequate postage to insure delivery to the following parties:

James M. Tennant, President  
Low Tech Designs, Inc.  
1204 Saville Street  
Georgetown, South Carolina 29440

Joe W. Foster, Esquire  
Morris Sinor, Esquire  
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Durham, North Carolina 27702

International Transcription Service  
1231 20th Street, N.W.  
Washington, D.C. 200366

  
Nina Gates  
Administrative Assistant

Columbia, South Carolina  
Dated: July 25, 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Petition for Commission Assumption )  
of Jurisdiction of Low Tech Designs, )  
Inc.'s Petition for Arbitration with GTE )  
South before the Public Service Commission )  
of South Carolina )

CC DOCKET NO.  
97-165

RESPONSE OF PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA TO  
PETITION FOR COMMISSION (FCC) ASSUMPTION OF JURISDICTION

The Public Service Commission of South Carolina (PSCSC) hereby responds to the Petition of Low Tech Designs, Inc. (LTD or Low Tech) for Commission (FCC) assumption of jurisdiction of Low Tech's Petition for Arbitration with GTE South before the Public Service Commission of South Carolina. PSCSC denies the contention of LTD that it has failed to fulfill its duty to arbitrate failed negotiations between LTD and GTE South (GTE) under Section 252(b) of the Telecommunications Act of 1996 (the Act). PSCSC therefore moves that the Federal Communications Commission deny LTD's Petition.

The Public Service Commission of South Carolina believes that the reasoning incorporated in Order No. 97-153, Docket No. 97-052-C, dated March 4, 1997 properly addresses the concerns raised by LTD in its Petition, and said Order (which is attached hereto) is hereby incorporated into this response as fully as if it appeared herein.

As shown therein, under Section 253(b) of the Act, a State has the continuing ability to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. PSCSC would argue that the requirements of S.C. Code Ann. §58-9-280(B), which was passed by the South Carolina General Assembly after the Telecommunications Act of 1996, exist for any company that attempts to enter the local exchange market. The Code Section (attached hereto in pertinent part) states first, that its requirements must not be inconsistent with the Federal Telecommunications Act of 1996. The requirements that follow this statement are obviously ones which would allow PSCSC to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. No "barrier to entry" is created by these provisions.

The Commission has every right to ascertain an Applicant's technical, financial and managerial resources, and that the Applicant can meet the service standards. The effect of the affordability of local exchange service and the possible participation in the support of universally available telephone service at affordable rates are criteria

under the State Statute that are consistent with the Act. Finally, potential adverse effects on the public interest by the application must be examined. All criteria are consistent with Section 253(b) of the Act.

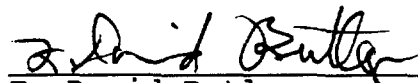
Further, LTD failed to provide copies of proposed tariffs, with its filing. As stated in Order No. 97-153, LTD could have filed an illustrative tariff only, and met Commission criteria. This is certainly not a "barrier to entry."

Finally, LTD states that PSCSC violates the "competitively neutral basis" requirement of Section 253(b) of the Act, when it approves agreements between an incumbent LEC and uncertificated entities, but does not arbitrate a failed agreement between an incumbent LEC and an uncertificated entity such as LTD. Such is simply not the case. Sooner or later all entities undergo examination under the 58-9-280(B) criteria before they may actually provide local service in South Carolina. Uncertified entities which were parties to an interconnect agreement may not provide the service until they provide the same information that LTD was asked to provide and are approved therefore. Asking an entrant to meet the criteria before arbitration is granted simply allows PSCSC to determine in advance of an arbitration proceeding if an entrant meets the statutory criteria before it expends its resources on an expensive and potentially

lengthy arbitration proceeding. A non-entrant that is a party to an arbitration agreement must also meet the same criteria before it provides service. Further, LTD's business arguments are unavailing. Formulating an illustrative tariff would not have cost the Company an excessive amount.

In summary, LTD's Petition should be denied. Quite simply, PSCSC did not "fail to carry out its responsibility" under Section 252(e)(5). PSCSC attempted to carry out its responsibility under Section 253(b) to protect the rights of the consumers of the State of South Carolina, the public safety and welfare, and to ensure the continued quality of telecommunications services prior to committing its time to a potentially lengthy and expensive arbitration process.

Respectfully submitted,



F. David Butler  
General Counsel  
Public Service Commission of  
South Carolina  
P. O. Drawer 11649  
Columbia, South Carolina 29211  
(803) 737-5117

Columbia, South Carolina  
July 25, 1997

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BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 97-052-C - ORDER NO. 97-453

MARCH 4, 1997

RECEIVED  
FCC  
FEB 23 1997

IN RE: Petition of Low Tech Designs, Inc. ) ORDER  
for Arbitration to Establish Wholesale ) DENYING  
Rates and an Interconnection Agreement ) PETITION  
for Access to and Rates for Unbundled )  
Network Elements with GTE South, Inc. )

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition ("Petition") of Low Tech Designs, Inc. ("LTD") for Arbitration before the Commission with GTE South, Inc. ("GTE") pursuant to the Telecommunications Act of 1996 (the "Act"). LTD's Petition was filed on or about January 17, 1997, and it requests that the Commission arbitrate several issues between LTD and GTE to establish an Interconnection Agreement. GTE filed a Return and Response in Opposition to the Petition on or about February 3, 1997. LTD then filed an Answer to GTE's Return on or about February 7, 1997. The Commission now considers these filings and denies LTD's Petition.

LTD attempts to avail itself of the Arbitration provisions of the Act in order to enter the local exchange market in South Carolina. It purports to have begun interconnection negotiations with GTE in August of 1996 in order to offer enhanced call processing services and advanced facilities-based network

"solutions." As admitted in its Petition, LTD is not a certificated new entrant local exchange carrier (LEC) in South Carolina. LTD in fact previously submitted an Application for a Certificate of Public Convenience and Necessity to this Commission. However, the Commission returned the Application to LTD for resubmission since the Application was insufficient on several grounds. LTD has made no further attempt to submit the complete and appropriate Application or otherwise comply with the statutory certification requirements.

LTD now seeks relief from the certification requirement of S.C. Code Ann. Section 58-9-10(13) (Supp. 1996), and further rejects that statute by stating in its Petition that State certifications "will be a barrier to entry" to companies such as LTD to entering the telecommunications market. LTD quotes Section 253(A) of the federal Act regarding barriers to entry as support for its position: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In its prayer, LTD finally requests the Commission arbitrate the outstanding issues between GTE and LTD.

In its Return to LTD's Petition, GTE states that LTD's suggestion that Sections 58-9-10(13) and Section 58-9-280(B) et seq. are "barriers to entry" is, at best, fallacious. GTE illuminates the fact that Section 58-9-280(B) et seq. was adopted after passage of the federal Act and does not conflict with the



Act. LTD's Answer to GTE's Response reiterates that Section 58-9-10(13) and related Code Sections are indeed barriers to entry and are contrary to the spirit and intent of the federal Act.

This Commission is not persuaded by LTD's arguments. S.C. Code Ann. Sections 58-9-10(13) and Section 58-9-280(B) et seq. (Supp. 1996) are law in this State. Section 58-9-280(B) authorizes the Commission to grant certification to applicants that propose to furnish local telephone service in the service territory of an incumbent LEC. The "applicants" who propose to operate as a telephone utility are defined as "new entrant local exchange carriers" in Section 58-9-10(13), and LTD indeed would be a "new entrant LEC." The requirements of Section 58-9-280(B) exist for any company that enters the local exchange market in this changing telecommunications industry. We feel that these Code sections indeed are not violative of or contrary to the spirit of the federal Act. As support for this position, we rely on the portion of Section 253 that LTD failed to quote in its filings:

State Regulatory Authority. - Nothing in [Section 253] affects the authority of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public's safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Section 253(B).

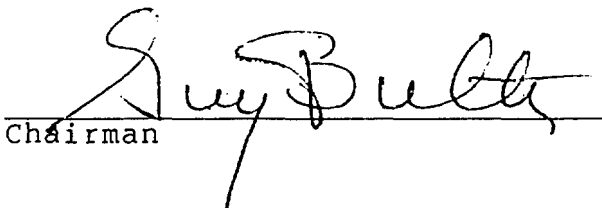
This Commission takes seriously its charge to uphold the law in South Carolina and protect the public's safety, welfare and

rights, as well as the service quality provided by telecommunications companies. We do not view our Legislature's actions as "legal tools" to be used as barriers, but instead as shields which we must uphold for the protection of consumers.

LTD does not require interconnection rates in order to file an Application for a Certificate of Public Convenience and Necessity in South Carolina. LTD may file an illustrative tariff, as we recognize that final rates are unknown until an Agreement is approved by this Commission. Therefore, this Commission denies LTD's Petition for Arbitration based on LTD's failure to fully pursue and obtain the certification required for it to become a competing LEC in South Carolina. We note that no other "uncertified" company has petitioned this Commission for Arbitration.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

TELEPHONE, TELEGRAPH, ETC. COS.

§ 58-9-280

**§ 58-9-250.** Unreasonable preferences and differences in rates or service shall not be made; reasonable classifications may be established.

**Cross references—**

Schedules, see § 58-9-230.

**§ 58-9-260.** Facilities and equipment shall be maintained in adequate manner.

**Research and Practice References—**

20A Am Jur Pl & Pr Forms (Rev), Public Utilities, Forms 111 et seq. (rights, duties, and liabilities).

23 Am Jur Pl & Pr Forms (Rev), Telecommunications, Forms 92 et seq. (rights and duties regarding service).

**Annotations—**

Telephone company's right to change subscriber's telephone number. 75 ALR3d 700.

**§ 58-9-280.** Certificate of public convenience and necessity shall be obtained prior to construction, operation or extension of plant or system; exceptions.

(A) No telephone utility shall begin the construction or operation of any telephone utility plant or system, or of any extension thereof, except those ordered by the commission under the provisions of Section 58-9-270, without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. But this section shall not be construed to require any telephone utility to secure a certificate for any extension within any municipality or district within which it had lawfully commenced operations on June 16, 1950, or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it as defined by the commission and not receiving similar service from another telephone utility; but, if any telephone utility in constructing or extending its lines, plant, or system unreasonably interferes or is about to interfere unreasonably with the service or system of any other telephone utility, the commission may make such order and prescribe such terms and conditions in harmony with Articles 1 through 13 of this chapter as are just and reasonable.

(B) After notice and an opportunity to be heard, the commission may grant a certificate to operate as a telephone utility, as defined in Section 58-9-10(6), to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC, subject to the conditions and exemptions stated in this section and in applicable federal law. The provisions of this act shall apply to any such application for a certificate pending before the commission on the effective date of this act; provided, however, that any carrier filing an application to furnish telecommunications service as a private line or special access service provider or as a carrier's carrier prior to March 25, 1996, may elect to comply with the certification requirements in effect on that date rather than those contained within this subsection (B); provided, further, however, that such carrier shall comply with subsection (B)(4) hereof. In determining whether to grant a certificate under this subsection, the commission may require, not inconsistent with the federal Telecommunications Act of 1996, that the:

(1) applicant show that it possesses technical, financial, and managerial resources sufficient to provide the services requested;

(2) service to be provided will meet the service standards that the commission may adopt;

(3) provision of the service will not adversely impact the availability of affordable local exchange service;

(4) applicant, to the extent it may be required to do so by the commission, will participate in the support of universally available telephone service at affordable rates; and

(5) provision of the service does not otherwise adversely impact the public interest.

In its application for certification, the applicant seeking to provide the service shall set forth with particularity the proposed geographic territory to be served, and a price list and informational tariff regarding the types of local exchange and exchange access services to be provided. Any person granted authority under this section shall maintain a current price list with the commission. A commission order, denying or approving an application for certification of a new local telephone service provider, shall be entered no more than sixty days from the filing of the application, except that the commission, upon notice, may extend that period not to exceed an additional sixty days.

(C) The commission shall determine the requirements applicable to all local telephone service providers necessary to implement this subsection. These requirements shall be consistent with applicable federal law and shall:

(1) provide for the reasonable interconnection of facilities between all certificated local telephone service providers upon a bona fide request for interconnection, subject to the negotiation process set forth in subsection (D) of this section;

(2) provide for the transfer of telephone numbers between local telephone service providers in a manner that is technically feasible;

(3) provide for the reasonable unbundling of network elements upon a request from a LEC where technically feasible and priced in a manner that recovers the providing LEC's cost;

(4) determine, for small LEC's, when and under what circumstances resale of local exchange telephone services is in the public interest and should be allowed. Telecommunications services that are available at retail to a specific category of subscribers only shall not be offered for resale to a different category of subscribers; and

(5) provide for the continued development and encouragement of universally available basic local exchange telephone service at reasonably affordable rates.

The final commission order implementing these requirements shall be issued within six months of the effective date of this section, except that the commission, upon notice, may extend that period up to an additional ninety days.

(D) A LEC shall negotiate the rates, terms, and conditions for local interconnection. In the event that the parties are unable to agree on appropriate rates, terms, and conditions for interconnection within one hundred thirty-five to one hundred sixty days of receipt of a bona fide request, either party may petition the commission for determination of the appropriate rates, terms, and conditions for interconnection. This period may be shortened or extended by mutual agreement of the parties. The commission shall determine the appropriate rates, terms, and conditions for interconnection within nine months from the filing of the petition in accordance with the terms of applicable federal law.

(E) In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF)

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